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**AGREEMENT
BETWEEN
THE DEPARTMENT OF DEFENSE
OF
THE UNITED STATES OF AMERICA
AND
THE MINISTRY OF DEFENSE
OF
THE FEDERAL REPUBLIC OF GERMANY
REGARDING THE EXCHANGE
OF
ENGINEERS AND SCIENTISTS
(SHORT TITLE: E&S AGREEMENT)**

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PREAMBLE

The Department of Defense of the United States of America (U.S.) and the Ministry of Defense of the Federal Republic of Germany, hereinafter referred to as "the Parties," have agreed as follows concerning a program for the exchange of Engineers and Scientists (E&S).

ARTICLE I DEFINITION OF TERMS

The Parties have agreed upon the following definitions for terms used in this Agreement:

Classified Information	Official Information that requires protection in the interests of national security and is so designated by the application of security classification markings.
Combatant Command	One of the U.S. unified or specified combatant commands established by the President (under Title 10 USC 164).
Controlled Unclassified Information	Unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the Information is provided or generated under an Agreement, the Information shall be marked to identify its "in confidence" nature. It could include Information which has been declassified, but remains controlled.
Exchange Program	The exchange of personnel under this Agreement.
Host Organization	The Military Service, Combatant Command, Defense Department/Ministry agency, or staff, or equivalent organizations, to which exchange personnel are assigned for duty pursuant to this Exchange Program.
Host Party	The Defense Department or Ministry of Defense (DoD/MOD) to which the Host Organization belongs.
Information	Any knowledge, regardless of form, provided to, generated in, or used in this Exchange Program.
Intellectual Property Rights	Rights relating to any product of the human mind the use of which is capable of being protected under the law. This includes e.g. patents, utility models, design patents, trade marks, trade secrets, and copyrights.

Invention

Any invention made (conceived or first actually reduced to practice) in the course of work performed under this Exchange Program. The term "actually reduced to practice" means the first demonstration, sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.

Parent Organization

The Military Service, Combatant Command, Defense Department/Ministry agency, or staff, or equivalent organizations to which exchange personnel belong.

Parent Party

The Defense Department or Ministry of Defense (DoD/MOD) to which the Parent Organization belongs.

Patent

Legal protection of the right to exclude others from making, using, or selling an Invention. The term refers to any and all Patents including, but not limited to, Patents of implementation, improvement, or addition, petty Patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protection as well as divisions, reissues, continuations, renewals, and extensions of any of these.

ARTICLE II PURPOSE AND SCOPE

2.1 This Agreement establishes the terms and conditions by which the Department of Defense of the United States of America and the Ministry of Defense of the Federal Republic of Germany (hereafter referred to as "the Parties"), agree to provide on-site work assignments in scientific and other agreed technical positions to selected engineer and scientist (E&S) personnel from the other Party. The work assignments shall provide the E&S personnel work experience and knowledge of the organization and management of Host Party defense activities by performing duties under the direction of a host supervisor. Exchanges of E&S personnel under this Agreement shall be conducted on a reciprocal basis so that the overall benefit to each Party shall be essentially equal. This Exchange Program shall not include training, except as provided in paragraph 5.4. This Exchange Program is not to be used for obtaining Information related to the design, development and manufacture of military systems.

2.2 E&S personnel shall not be assigned to positions under this program that would involve the release of Restricted Data or Formerly Restricted Data as defined in the U.S. Atomic Energy Act of 1954 as amended; communications security information; Information for which foreign dissemination has been prohibited in whole or in part; Information for which a special access authorization is required; Information originated by another organization, department, agency or government; or Controlled Unclassified Information, unless the specific Information has been authorized in writing for release to the government of the Parent Party under an existing program or with prior written consent of the appropriate disclosure authority, whichever is applicable.

2.3 E&S personnel shall not act in a liaison capacity or otherwise act as representatives of the Parent Party or the Parent Organization, while assigned to exchange positions, nor shall they act as representatives of the Host Party or the Host Organization to which they are assigned. E&S personnel shall perform duties as defined in the position descriptions (PDs) for their respective positions.

2.4 E&S personnel shall be nominated and assigned to positions with a Host Organization in accordance with the procedures at Annex A.

2.5 The Parties shall designate an Executive Agent and a Managing Agent to oversee the Exchange Program established by this Agreement. The Executive Agent and Managing Agent shall have the responsibilities described in Article III, below.

ARTICLE III EXECUTIVE AGENTS AND MANAGING AGENTS

3.1 For the Department of Defense of the United States of America, the Executive Agent (EA) for this Agreement shall be the Office of the Under Secretary of Defense (Acquisition and Technology) which has delegated responsibilities to the Under Secretary of the Air Force for International Affairs (Armaments Cooperation Division). For the Ministry of Defense of the Federal Republic of Germany, the Executive Agent shall be the Bundesamt für Wehrtechnik und Beschaffung (BWB). The Executive Agents shall be responsible for:

- 3.1.1 Establishing this Agreement;
- 3.1.2 Periodically reviewing this Agreement to ensure conformity with current law and regulations;
- 3.1.3 Recommending amendments to this Agreement; and
- 3.1.4 Maintaining a record of exchange positions and Managing Agents.

3.2 For the Department of Defense of the United States of America, a Managing Agent (MA) shall be designated at each Host Organization to which E&S personnel are assigned. For the Ministry of Defense of the Federal Republic of Germany, the Managing Agent shall be the Bundesamt für Wehrtechnik und Beschaffung (BWB ZA III 3). The Managing Agents shall be responsible for:

- 3.2.1 Entering into specific exchanges;
- 3.2.2 Maintaining a record of the position descriptions for all E&S positions for the Host Organization in accordance with Annex A;
- 3.2.3 Ensuring that exchanges are conducted in accordance with the approved position descriptions, applicable laws and regulations, and this Agreement;
- 3.2.4 Reporting exchange positions to their respective E&S EAs; and
- 3.2.5 Approving amendments to position descriptions.

ARTICLE IV

SELECTION AND ASSIGNMENT OF PERSONNEL

4.1 Participation in this Exchange Program shall be on a highly selective basis from among military and civilian personnel of the U.S. DoD and the MoD. The Parent Organization shall be solely responsible in the selection of its E&S personnel based on the following criteria:

- 4.1.1** They must have demonstrated capabilities for future positions of greater responsibility.
- 4.1.2** They must be well-versed in the current practices, technical training and doctrine of their organization, and be particularly qualified through experience for the exchange positions to be occupied.
- 4.1.3** They must possess the grade, skill, training, and academic qualifications described in the applicable position descriptions.
- 4.1.4** They must be sufficiently proficient in the language of the Host Party to satisfy the requirements of the positions.
- 4.1.5** They should hold at least an undergraduate degree or Fachhochschule degree and have at least four years of practical experience in the technical area related to the positions to which they shall be assigned.

4.2 To assist in the evaluation and selection of E&S personnel, MAs shall provide professional background resumes, career areas of interest, and assignment objectives for each candidate, following the format of Appendix 1 of Annex A, to each other nine (9) months prior to the desired date of each assignment. Final selection of E&S personnel shall be by mutual agreement between the MAs at least four (4) months prior to the assignment. If a replacement is necessary, because of unforeseen circumstances, exceptions will be allowed by mutual agreement of the Managing Agents.

4.3 The placement of E&S personnel nominated under this program shall be conditional upon the ability of the Host Organization to provide work assignments commensurate with the purpose and scope of the program for a mutually agreed period of time.

4.4 Consistent with the nomination process, the Host Party shall be authorized to discharge E&S personnel from this program who do not meet the above criteria. This decision is within the sole discretion of the Host Party after informing the Parent Party.

ARTICLE V FINANCIAL ARRANGEMENTS

5.1 The Parent Party's responsibilities shall include, but shall not be limited to, the following costs for its E&S personnel:

5.1.1 All pay and allowances.

5.1.2 Travel to and from the country of the Host Party.

5.1.3 Language training, if required.

5.1.4 All temporary duty costs, including travel costs, when such duty is carried out at the request of the Parent Party.

5.1.5 The movement of dependents and the household effects of E&S personnel.

5.1.6 Preparation and shipment of remains and funeral expenses in the event of the death of E&S personnel or their dependents.

5.1.7 All expenses in connection with the return of E&S personnel who have been discharged from this Exchange Program and their accompanying dependents.

5.2 The Host Party shall be responsible for the following:

5.2.1 Travel and subsistence costs in connection with the performance of any duty carried out pursuant to a requirement of the Host Party.

5.2.2 Costs incurred as a result of a change in location of work ordered by the Host Party during the period of the exchange.

5.2.3 The cost of training programs, requested by the Host Organization, and conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignment of the exchanged personnel.

5.3 The Host Party shall not charge for the use of facilities or equipment necessary for the performance of tasks assigned to E&S personnel.

5.4 The Parent Party shall pay the costs of formal and informal training and professional military education (PME), except as noted in paragraph 5.2.3.

5.5 The Host Party shall not provide any supplies or services related to those costs that, by virtue of paragraph 5.1 above, are the obligation of the Parent Party. Accordingly, it shall be

necessary for the Parent Party to make arrangements to defray such costs directly through its personnel, rather than by reimbursement to the Host Party.

5.6 The obligations of each Party under this Agreement shall be subject to the authorization and availability of funds for such purposes.

ARTICLE VI SECURITY

6.1 During the selection process, each Party shall inform the other of the level of security clearance required, if any, to permit E&S personnel to have access to Classified Information and work areas. Access to Classified Information shall be consistent with Article II paragraph 2.2 of this Agreement and shall be kept to the minimum required to accomplish the work assignment, as determined by the Host Party based on the applicable position description.

6.2 Each Party shall cause security assurances to be filed, through the Federal Republic of Germany Embassy in Washington, DC, in the case of the Federal Republic of Germany personnel, and through the U.S. Embassy in the Federal Republic of Germany, in the case of the United States personnel, stating the security clearances for all E&S personnel selected. The security assurances shall be prepared and forwarded through prescribed channels in compliance with established Host Party procedures.

6.3 The Host Organization and the Parent Organization shall ensure that assigned E&S personnel are fully cognizant of applicable laws and regulations concerning the protection of proprietary Information (such as Patents, copyrights, know-how, and trade secrets), Classified Information and Controlled Unclassified Information to which access might be gained under this Exchange Program, both during and after termination of an assignment; and shall be required to sign the certification at Annex B.

6.4 E&S personnel shall at all times be required to comply with the security laws, regulations and procedures of the government of the Host Party. Any violation of security procedures by E&S personnel during their assignments shall be reported to the Parent Party for appropriate action. E&S personnel committing willful violations of security procedures during their assignments shall be withdrawn from this Exchange Program with a view toward administrative or disciplinary action by the Parent Party.

6.5 All Classified Information made available to E&S personnel shall be considered as Classified Information furnished to the Parent Party, and shall be subject to all provisions and safeguards provided for under the General Security Agreement between the United States of America and the Federal Republic of Germany, dated 23 December 1960, as amended, and including the Industrial Security Annex thereto, dated 16 April 1970, as amended.

ARTICLE VII TECHNICAL AND ADMINISTRATIVE MATTERS

7.1 To the extent authorized by the laws and regulations of the government of the Host Party, the Host Organization shall arrange for the provision of administrative support as is deemed necessary for E&S personnel to perform assigned tasks efficiently. The Host Organization shall familiarize E&S personnel with any unique procedures necessary for the proper performance of their assigned tasks.

7.2 Consistent with the laws and regulations of the government of the Host Party, E&S personnel assigned under this Agreement shall be subject to the same restrictions, conditions, and privileges as Host Party personnel of comparable rank in their areas of assignment. Further, to the extent authorized by the laws and regulations of the government of the Host Party, E&S personnel and their authorized dependents shall be accorded on a reciprocal basis:

7.2.1 Exemption from any tax by the government of the Host Party upon income received from the government of the Parent Party.

7.2.2 Exemption from any customs and import duties or similar charges levied on items entering the country of the Host Party for their official or personal use, including their baggage, household effects, and private motor vehicles. The foregoing shall not in any way limit privileges set forth elsewhere in this Agreement, or other privileges granted by the laws and regulations of the government of the Host Party.

7.3 E&S personnel and their dependents shall be informed by the Host Organization about applicable laws, orders, regulations, and customs. E&S personnel and their dependents also shall be briefed by Host Organization personnel regarding their specific entitlements, privileges, and obligations upon their arrival in the country of the Host Organization.

7.4 E&S personnel may observe the holiday schedule of either the Parent Party or the Host Party as mutually agreed.

7.5 E&S personnel shall be assigned work under the guidance and supervision of a host supervisor. The host supervisor shall establish performance standards and observe the performance of E&S personnel to provide a basis for counseling and performance evaluations. E&S personnel shall have performance evaluations rendered in accordance with the applicable Parent Party regulations and their position descriptions, which shall be consistent with the example at Annex A, Appendix 2.

7.6 E&S personnel committing an offense under the laws of the government of either the Parent or the Host Party may be withdrawn from this Exchange Program with a view toward further administrative or disciplinary action by the Parent Party. Disciplinary action, however, shall not be taken by the Host Party against E&S personnel and E&S personnel shall not exercise

disciplinary powers over personnel of the Host Party. The Parties shall cooperate when legally possible in carrying out administrative or disciplinary action by the Parent Party against its E&S personnel.

7.7 Medical and dental care for E&S personnel shall be provided in accordance with the agreement between the US DoD and the Federal Republic of Germany MoD concerning Health Care for Members of the Armed Forces and their Dependents, dated April 8, 1992, amended March 22, 1994 and extended June 5, 1997.

7.8 In no case shall E&S personnel be assigned to positions which would require exercise of command or be assigned to other positions that would require them to exercise responsibilities that are reserved by law or regulation to an officer or employee of the United States of America or the Federal Republic of Germany.

7.9 E&S personnel shall not be placed on duty or in positions in areas of political sensitivity where their presence would jeopardize the interests of their Parent Party, or where, in the normal course of their duty, they may become involved in activities which may embarrass the Parent Party.

7.10 The Host Party shall not deploy E&S personnel in non-direct hostility situations, such as UN peacekeeping or multi-national operations, without Parent Party approval. Additionally, E&S personnel shall not be deployed to a third country without Parent Party approval.

7.11 The Host Party shall not place E&S personnel in duty assignments in which direct hostilities with forces of third states are likely. Should a unit in which military personnel are assigned become involved in hostilities unexpectedly, E&S personnel assigned to the unit shall not be involved in the hostilities without authorization from the Parent Party. E&S personnel approved by both the Parent Party and the Host Party for involvement in hostilities shall be given clear guidance on the Host Party's interpretation of laws of war, to include the rules of engagement.

7.12 Purchasing and patronage privileges at military commissaries, exchanges, theaters and clubs shall be extended to E&S personnel and their dependents on the same basis as equivalent personnel of the Host Party. This provision shall not, however, limit privileges set forth elsewhere in this Agreement or other privileges granted by the Host Party, at its discretion, with the consent of the Parent Party.

7.13 E&S personnel shall be granted leave according to their entitlements under the regulations of the Parent Organization, subject to the approval of the proper authorities of the Host Organization.

7.14 Military E&S personnel shall be required to comply with the dress regulations of the Parent Organization. The order of dress for any occasion shall be that which most nearly conforms to the order for the Host Organization with which they are serving. For military and

civilian E&S personnel, customs of the Host Organization shall be observed with respect to wearing of civilian clothes.

7.15 Consistent with the laws and regulations of the government of the Host Party, and upon conditions of reciprocity, the Host Organization shall provide, if available, housing and messing facilities for E&S personnel and their dependents on the same basis and priority as for its own personnel. E&S personnel shall pay directly, messing and housing charges, to the same extent as personnel of the Host Organization. At locations where facilities are not provided by the Host Organization for its own personnel, the Parent Organization shall make suitable arrangements for E&S personnel.

7.16 The United States/Federal Republic of Germany Status of Forces Agreement pertaining to rights and privileges of military and civilian personnel while in the country of the Host Party shall apply to E&S personnel and their dependents. The agreements which pertain are the 1951 "Agreement Between the Parties of the North Atlantic Treaty Regarding the Status of Their Forces" and the "Agreement of 3 August 1959, as Amended by the Agreements of 21 October 1971, 18 May 1981, and 18 March 1993, to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces with Respect to Foreign Forces Stationed in the Federal Republic of Germany."